

STATE OF MICHIGAN

THE THIRD JUDICIAL COURT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

Case No. 08-006961

2007718778

JAMES ANDREW POWELL,

Defendant.

SENTENCE

Proceedings had and testimony taken before
the HONORABLE TIMOTHY M. KENNY, Wayne County Circuit
Judge, Room 602, Frank Murphy Hall of Justice, Detroit,
Michigan, on Wednesday, August 20, 2008.

APPEARANCES:

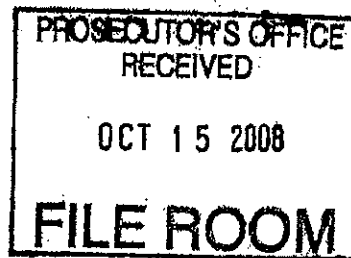
MS. ELIZABETH WALKER, Esq.,

Appearing on behalf of the People.

DOUGLAS HAMPTON, Esq.,

Appearing on behalf of the Defendant.

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1 Detroit, Michigan

2 Wednesday, August 20, 2008

3 Approximately 12:10 p.m.

4 PROCEEDINGS

5 THE CLERK: Case Number 08-6961, the People
6 of the State of Michigan versus James Powell.

7 This matter is set day for sentencing.

8 MS. WALKER: Good morning, Your Honor,
9 Elizabeth Walker for the People.

10 MR. HAMPTON: Douglas Hampton on behalf of
11 Mr. Powell. We have had an opportunity to go through
12 the Presentence Report. There are no additions,

13 However, there are a couple of inaccuracies,
14 I would like to bring to the Court's attention with
15 respect to the agent's description of the offense.
16 We're probably about the third page, Judge, of your
17 report at the bottom.

18 It indicates that Mr. Powell began firing
19 shots at the witness. That is not true. We
20 established that at the Preliminary Examination.
21 That's why the two Counts of assault with intent to
22 murder were dismissed at the Preliminary Examination
23 and two Counts of felonious assault were added.

24 The testimony was that there were shots that
25 were fired in the air, and actually one shot that hit a

1 roof of the house and another shot that hit a door, the
2 door of a vehicle. That this was nowhere near the
3 other witness that precipitated those particular
4 charges.

5 So for the record I believe that is
6 completely inaccurate and should be stricken from the
7 report.

8 MS. WALKER: I did not conduct the
9 Preliminary Examination. So I cannot attest to the
10 accuracy of that information. I do know that more than
11 one shot was fired. So I will have to defer to counsel
12 as to that factors.

13 THE COURT: All right. I will delete that
14 sentence.

15 MR. HAMPTON: One more point, Judge, on that,
16 also on the same agent's description of the offense.
17 There is a statement Mr. Powers took money from the
18 complainant. Also at the Preliminary Examination,
19 Judge, that was not established. That was not
20 testimony that was given by the witnesses.

21 MS. WALKER: I believe money was demanded.
22 That's primarily for the reason contact to begin with.
23 Whether it was turned over, I cannot say.

24 MR. HAMPTON: That's the difficulty. That I
25 don't I don't want him to have some time down the line.

1 There's a statement that the defendant got out of his
2 truck and got in a verbal argument with the
3 complainant. I think that coincides with what Madam
4 Prosecutor was talking about, but the fact that he
5 actually took money from the client --

6 THE COURT: Right.

7 MR. HAMPTON: He denies that.

8 Your Honor, one more thing. In the
9 witness -- victim impact statement, Judge, there is
10 some testimony that my client had been laughing in
11 court and was not showing remorse in court.

12 And Judge, we've been in front of you at
13 least three times and that has never happened. And
14 certainly I don't want the impression to be given --
15 it's under the victim's statement, Judge, or by the
16 reporter, anyone that reads this report down the line
17 that my client is not remorseful regarding the
18 situation.

19 Certainly if he was not taking it seriously,
20 I am certain that the Court would have reprimanded my
21 client, me and everyone else involved in this case if
22 my client was in court laughing at any time or even
23 smiling for that fact.

24 THE COURT: No. I agree with you. That I
25 certainly don't recall seeing that type of behavior.

1 If I did, I would note that. But there is also a
2 notation that the victim's family says that he's
3 laughing all the time.

4 Now whether that occurred at some other court
5 appearance in District Court or whatever, I have no
6 idea. But certainly for purposes of whatever sentence
7 transcript is generated which may come before the
8 Parole Board at some point, I would indicate that for
9 the record I have not personally observed Mr. Powell
10 laughing or appearing to make light of this particular
11 circumstance.

12 Because certainly I would have made note of
13 it. But in terms of the victims' observations in other
14 proceedings, I'm going to let the victim impact
15 statement remain as it is.

16 MS. WALKER: Thank you.

17 MR. HAMPTON: Thank you.

18 One final thing, Judge, that I would like to
19 touch upon. I was going to make a statement with
20 regard to restitution, but it already indicates in the
21 report that restitution should be held at zero.

22 MS. WALKER: I'm going to challenge that.

23 THE COURT: Well, I don't believe that's
24 accurate.

25 MS. WALKER: I would like to address that

1 when the Court is ready.

2 THE COURT: We can certainly address that.

3 Let me just state preliminarily what my policy and
4 procedure is. First of all, in the Crime Victim Rights
5 Act the victim is, surviving victim's family members
6 are entitled to restitution.

7 The policy and procedure that I follow is to
8 have prosecutor's office work with the victim's family
9 and provide documentation for that particular loss,
10 that dollar figure. The basis for that dollar figure
11 is then shared with the defendant and counsel.

12 If for some reason they choose to dispute
13 that figure, then we will have a Hearing, and then I
14 will determine what is the appropriate dollar figure.

15 MS. WALKER: I'm satisfied with that. We
16 have part documentation today. The reason we only have
17 part is that the victim was buried in Iraq. His fiance
18 was in Iraq. He was originally from there, and that's
19 where the body was returned for burial.

20 Some of those costs we do yet have the
21 receipt for because I think in the grieving process
22 some of them got misplaced, but we are obtaining
23 duplicates. We do have the initial receipts for the
24 initial funeral cost state side. That includes a
25 family discount, if you will, a discount for the

1 family. I guess there is a connection or maybe just a
2 friendship with the funeral home was \$4,250.00, which
3 they paid in full.

4 That does not reflect the cost to transport
5 the coffin and burial in Iraq. So they have that part.
6 They are producing or getting duplicates of the other
7 part, of the rest of the cost for that. And,
8 therefore, they're fully prepared to when they get
9 those, turn those over to the Probation Department.

10 They told the Probation Department that it
11 was approximately \$12,000.00 in total. This represents
12 approximately one third of the -- it's expensive to
13 return the body there, but that's --

14 THE COURT: Let me just suggest this,
15 Ms. Walker: You know to what extent that it is
16 possible, I would much prefer to have the total bill
17 before we have a Hearing. I think it can become
18 burdensome to the Court to kind of do it in segments.

19 I can appreciate the fact that there is some
20 documentation, and it just seems to me that it may be
21 easier for restitution amount purposes if we can have
22 the totality at one time.

23 Now I may recognize that perhaps having to
24 deal with matters overseas, that that may become
25 problematic, and it may become difficult, if not

1 impossible I don't know to get all of the figures
2 together.

3 If that's the case, then I think, you know,
4 you can submit it. If it turns out to be like 90
5 percent or 80 percent of it, then it's communicated to
6 the Probation Department, and the defense that -- well,
7 there is still a portion left over, and it's for this
8 particular purpose. That's fine. But I just as soon
9 not do it one chapter as a time.

10 MS. WALKER: I understand, Judge. I only was
11 offering that just too so the record was clear that it
12 is not about zero. It is more, and we are gathering
13 those documents, and we will get the others before we
14 ask the Court to make a final determination.

15 MR. HAMPTON: Just so the record is clear,
16 Judge, obviously I don't want to make a money argument
17 today, especially in light of the circumstances, one.
18 But just for the record we would dispute some of the
19 costs that I anticipate now I believe the prosecution
20 is going to try to add. As far as a restitution amount
21 if they are talking about shipping a body back to Iraq,
22 when this was a citizen, Judge, if not an American
23 citizen but working and living here in the state and
24 trying to impute that cost on my client, as his
25 attorney, Judge, obviously we'll have to dispute that.

1 It sounds as though we will be having a restitution
2 Hearing.

3 THE COURT: That will be fine. I think once
4 all the information is in, it's communicated to you,
5 then I think what we'll then have you have the
6 opportunity to let us know what you dispute. We'll
7 litigate if there's a controversy.

8 MS. WALKER: That's fine.

9 MR. HAMPTON: That's fine, your Honor.
10 Thank you.

11 Judge, I believe one of the last points I'm
12 not sure if Madam Prosecutor wants to bring it.

13 MS. WALKER: The guidelines.

14 I think we have agreed, Judge, that there are
15 some corrections that should be made to the SIR. On
16 the PRV's we agree that PRV One is zero. Two should be
17 five. Three is zero. Four is zero, but PRV Five
18 should be 10.

19 The defendant had five prior misdemeanor
20 offenses. One was a driving while license suspended,
21 which the defense interprets as a traffic offense and
22 therefore should not be counted. I interpret it as a
23 misdemeanor which should be counted.

24 Even if he's right, and I'm wrong, there are
25 still four, which means he should get 10 points on PRV

1 Five instead of five.

2 MR. HAMPTON: Judge, her recitation is
3 correct. I mean even if I'm correct to that amount, we
4 still have enough for the 10. But it does not change
5 from a "D." It's still 45 points.

6 MS. WALKER: It's 45 instead of 40, but it's
7 still a "D."

8 THE COURT: PRV Five all right is 10 points.
9 Just for the record I would believe that it
10 is a misdemeanor traffic offense, does count as a
11 misdemeanor as opposed to a civil infraction like
12 making a prohibited left turn, something like that.
13 But it doesn't change the points. It's fairly
14 academic.

15 MS. WALKER: On the Offense Variables I think
16 this is a need for changes. We agree that OV One is
17 25, OV Two is five. OV Three is 25. OV Four is zero,
18 OV Five is scored at 15. I believe the defense
19 disputes that. Six is 25. Nine is 10.

20 The Probation Department has scored OV 12 at
21 25. I don't believe OV 12 should be scored. If I'm
22 correct in understanding the guidelines, I don't think
23 in the final analysis it would matter. But just so
24 that the SIR is correct, I don't have any score for OV
25 12. I have it at zero.

1 MR. HAMPTON: Obviously the defendant has it
2 at zero as well, Judge.

3 THE COURT: I agree. 12 is zero.

4 MS. WALKER: Everything else is zero. So the
5 total is, my total would be 105, which would still be a
6 three. The defense disputes OV Five being scored at
7 15. I will let him make his argument, and I will put
8 forth why I think it should be 15.

9 MR. HAMPTON: Judge, that's the only dispute
10 we actually had on the OV's. OV Five has to do with
11 psychological injury sustained to a member.

12 MS. WALKER: The member family, Judge.

13 MR. HAMPTON: Understanding treatment does
14 not have to be sought, they don't have to have already
15 seen a psychiatrist. But if you look at the actual
16 Presentence Investigator's Report that we received,
17 Judge, aside from the fact that they are mad about this
18 incident, which I can completely understand, my client
19 completely understands. The fact that they miss their
20 family member, I completely understand. But that is
21 nothing that is out of the ordinary.

22 I've just been given some information just
23 prior to us coming up here, Judge, regarding a family
24 member, a younger person that lived in the household
25 that -- by the way we were unable to contact for

1 purposes of the Preliminary Examination or even have
2 any discussion with this person.

3 What he indicated is that the family members
4 are saying now that he's seeing some family doctor and
5 is suffering from depression regarding this. Judge, we
6 haven't heard any of this. As a matter of fact, today
7 is the first time that I heard anything about this
8 individual that for quite a while could not be found by
9 the prosecution.

10 Aside from that, Judge, there has been no
11 documentation that has been presented to the Court
12 there has been any doctor visit, any treatment
13 whatsoever.

14 This is essentially a family member coming in
15 today after a statement was already given in the
16 Presentence Report that there wasn't any -- coming in
17 today saying well, this is a family member that has
18 been having some psychological problems.

19 If that's all they have, Judge, then I don't
20 believe that that OV Five should be scored at 15. I
21 believe it should be zero because there is nothing out
22 of the ordinary under those circumstances that should
23 rise to that level.

24 MS. WALKER: The particular family member is
25 the younger brother, who lived with the deceased. He's

1 not attended any of the court proceedings. Part of
2 that, and perhaps counsel has less information. There
3 is a language problem, which is obviously why
4 Mr. Hammoud is here to help me even to communicate with
5 the family. And Mr. Hammoud has been helpful in
6 helping Larry Talon, the other prosecutor who was
7 originally assigned the case, to communicate with the
8 family.

9 So while they have some ability to
10 communicate in English, it's limited. I have no
11 ability to communicate in Arabic. I inquired and could
12 not make clear to them what the question was that I was
13 asking through Abed Hammoud. Mr. Hammoud was able to
14 ask -- he was able to explain what we mean by
15 psychological need or treatment or counseling or
16 assistance.

17 The younger brother was the one who was
18 probably the closest not -- the family is not close,
19 but this particular younger brother lived with the
20 deceased. He has not been able to work since this. He
21 has not eaten appropriately. Let's say he continues to
22 go back to the house and to wander through the house
23 and to cry.

24 He's gone to -- he's not been able to get
25 himself back to normal functions. He goes to this

1 family doctor. Do what? What's the matter? Why can't
2 I shake that off? Why can't I seem to function. The
3 doctor has told him it's depression brought on as a
4 result of this incident.

5 I believe that that constitutes a need for
6 psychological treatment. Whether he gets it, whether
7 he treats with a clinician is a different story. And I
8 can think of both cultural and language reasons why
9 that might, as well as economic, might be problematic,

10 But I certainly think in scoring the Offense
11 Variables this one family member is grieved in this
12 particular way and has sought at least an explanation
13 from medical personnel, would qualify as a need for
14 psychological treatment. That would Warrant the 15
15 points.

16 The others are more angry perhaps and better
17 able to cope perhaps because they are older. I don't
18 know. But that doesn't mean that this is false or that
19 he has to bring in his medical records to show that. I
20 don't think that's what the guidelines indicate.

21 MR. HAMPTON: I can be very brief, Judge. I
22 certainly don't want to seem insensitive. This is a
23 very difficult situation for everyone in the courtroom.
24 I certainly don't want the family to think I'm
25 insensitive. But Mr. Hammoud has been with the family

1 here at least on two, maybe three proceedings and had
2 ample opportunity to have garnered this information,
3 provide some documentation to the Court this individual
4 has actually treated or is actually going through a
5 depression.

6 This is the first time we're hearing from
7 this person. From what we had been told, he's going to
8 be out of state. They are coming back. They are going
9 through all these particular issues right now.

10 Certainly prior to today that is information
11 that could have been gotten to Mr. Talon, or
12 Mr. Hammoud or someone else at the prosecutor's office.
13 Because if we're talking about a language barrier, he
14 has at least been here over a month now and having
15 discussions with the same family that has been in the
16 courtroom with me every single proceeding.

17 Again I don't want to be insensitive, Judge,
18 or I'm not saying that he's lying or anything of that
19 nature. The purpose of the guidelines, there has to be
20 more than just an allegation brought up at the
21 sentencing. There has to be something that the Court
22 can hang its hat on.

23 THE COURT: Well, I would agree that there
24 has to be something that the Court can hang its hat on,
25 and I do think that the emphasis on the guidelines is

1 on the nature of the injury, not on the extent and/or
2 quality of the treatment. It has to be an injury that
3 requires professional treatment, as opposed to someone
4 who would be going through the normal grieving process.

5 And as to that, I look to what is the
6 victim's impact statement that is here contained in the
7 Presentence Report, and the victim's brother
8 articulates that some 13 months after the death he's
9 saying that he doesn't want to accept the fact that
10 he's lost his brother, and that we all still cry.

11 Well now we have all, many of us have lost
12 family members, whether it's a parent or sibling or
13 whatever, and there is a grief process that we all go
14 through.

15 It does seem to me if you are 13 months away
16 from a particular loss, and you still are saying I
17 don't want to accept the fact. I don't want to accept
18 the reality that I have lost a loved one, and that
19 you're -- I don't want to say that you're not crying.

20 There are, I mean quite frankly I mean two
21 days ago was the anniversary of my father passing.
22 When I spoke to my mother, I know it's still a bad day
23 for her, but she doesn't do that every day. She
24 doesn't mourn all the time.

25 And it does seem to me that 13 months after

1 the incident still crying, still not accepting the
2 reality of what has happened, does constitute the kind
3 of psychological injury that if it were someone in my
4 family that was reacting that way, I would be going to
5 the telephone and making an appointment for this person
6 to go see a counselor.

7 So that's my ruling.

8 And, Mr. Hampton, your objection is noted and
9 protected for appeal, but I do think 15 points is
10 appropriate.

11 MR. HAMPTON: Thank you, Judge.

12 THE COURT: All right.

13 MR. HAMPTON: Other than that, your Honor, we
14 are prepared. Ready to proceed.

15 MS. WALKER: As far as the sentence, the
16 family has written a very brief statement, and they
17 have asked that I read it into the record as their
18 impact statement.

19 It's dated August 17th, 2008.

20 "We, the Al-Ganzawi Family are requesting
21 justice for our beloved brother and son, Haidar
22 Al-Ganzawi, for the pain and suffering that was brought
23 on to us by this stranger, the accused, will never end.

24 An innocent man's life was taken away. The
25 smile has been taken away. We were in the process of

1 preparing for his wedding. Instead, we prepared for
2 his funeral. This has been very heartbreaking. He put
3 smiles on our faces and was a great person. Our tears
4 will always be flowing, and our house will always
5 mourn. His life was taken away so violently.

6 We, the Al-Ganzawi Family, wish the accused
7 in this horrific crime be punished for his crime and go
8 to prison. He should remain in a prison cell so he
9 shall not hurt anyone else again.

10 Thank you, the Al-Ganzawi Family."

11 Thank you.

12 THE COURT: Anything else you want to add
13 other than there's a sentence agreement?

14 MS. WALKER: No. I just ask the Court
15 sentence according to that agreement.

16 THE COURT: Mr. Hampton, anything else you
17 want to say?

18 MR. HAMPTON: Nothing for myself, your Honor.

19 THE COURT: Mr. Powell, this is the date and
20 time scheduled for sentencing. You have the right to
21 speak at sentencing if you like.

22 Is there anything that you would like to say
23 before I impose sentence?

24 DEFENDANT POWELL: No, sir.

25 THE COURT: All right.

1 I'll go along with the sentencing agreement.

2 MR. HAMPTON: Your Honor, I may then because
3 I had spoke to my client, and I thought that he was
4 going to say something. But I at least want to put on
5 the record my client was completely remorseful
6 regarding this incident, not just because of his plight
7 (sic), Judge, but also for the family that was involved
8 in this particular incident.

9 He's articulated that to me numerous times
10 that I have actually visited him in jail since he has
11 been awaiting this particular case. I just wanted to
12 be clear for the Court that's his feeling on this.

13 THE COURT: On the charge of felony firearm
14 it is the sentence of the Court that you be committed
15 to the Michigan Department of Corrections for a period
16 of two years with credit for 140 days spent in custody.

17 On charge of being a felon in possession of a
18 firearm it is the sentence of the Court that you be
19 committed to the Michigan Department of Corrections for
20 a period of not less than two years, a period not
21 greater than five years.

22 On the two charges of felonious assault, it's
23 the sentence of the Court that you be committed to the
24 Michigan Department of Corrections for a period of not
25 less than two years, a period not greater than four

1 years on each Count.

2 On the charge of murder in the second degree
3 it is the sentence of the Court that you be committed
4 to the Michigan Department of Corrections for a period
5 of not less than 25 years, a period not greater than 40
6 years.

7 The second degree murder sentence along with
8 the two Counts of felonious assault and felon in
9 possession of a firearm will run concurrent with one
10 another. They will run consecutive to the two years on
11 the felony firearm.

12 There's \$60.00 state cost, \$60.00 Crime
13 Victim Assessment Fee. \$600 state costs -- court cost
14 rather and \$400.00 attorney fees.

15 You may file application for leave to appeal
16 your conviction and sentence. If you choose to do so,
17 sir, you must do so within 42 days. If you can't
18 afford to hire an attorney, the Court will appoint
19 and --

20 MR. HAMPTON: Judge, did you say attorney
21 fees in this matter?

22 THE COURT: Yes.

23 MR. HAMPTON: We are retained on this matter.

24 THE COURT: Then I will correct that. It
25 should be retained on here. I'm sorry.

1 No attorney fees.

2 If you can't afford to hire an attorney for
3 your appeal, the Court will appoint an attorney and
4 furnish the attorney with portions of the transcripts
5 and records that may be needed. That has to be done
6 within 42 days as well.

7 Good luck to you, sir.

8 MR. HAMPTON: Thank you, Judge.

9 (Whereupon this matter was concluded).
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REPORTER'S CERTIFICATE

3 STATE OF MICHIGAN)
) ss
4 COUNTY OF WAYNE)

I, SHEDRIA L. BLACKMAN, CSR-0454, Official Court Reporter in and for Recorder's Court, in the City of Detroit, State of Michigan, do hereby certify that the foregoing pages 1 through 23, inclusive, was reduced to typewritten form by means of Computer-Assisted Transcription and comprise a true and accurate transcript of the proceedings taken in the People of the State of Michigan versus James Powell, File Number 08-6961 on August 20, 2008.

Shedria L. Blackman
SHEDRIA L. BLACKMAN, CSR-0454
OFFICIAL COURT REPORTER

21 DATED: This 8th day of October, 2008.